

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

THOMAS McCUNE,
Petitioner,

Civil Action No. 05-1042

v.

Judge Arthur J. Schwab
Magistrate Judge Lisa Pupo Lenihan

COMMONWEALTH OF
PENNSYLVANIA,
Respondent.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is recommended that this case be dismissed for failure to prosecute.

II. REPORT

On July 28, 2005, Petitioner Thomas McCune submitted with this Court a Petition for Writ of Habeas Corpus. (Doc. 1). Thereafter, the undersigned issued an Order notifying Petitioner that his habeas petition would not be processed any further for failure to comply with the Federal Rules and Local Rules and that if he wished to proceed he must include \$5.00 for a filing fee or move to proceed *in forma pauperis* by November 14, 2005. (Doc. 2). The Petitioner was further notified that failure to adhere to the Order would result in a recommendation to dismiss the case for failure to prosecute. (Id.)

Petitioner did not respond to the Order. To date, no additional activity has occurred on the docket. Accordingly, it is respectfully recommended that this case be dismissed for failure to prosecute.

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates, Petitioner is allowed ten (10) days from the date of service to file objections to this report and recommendation. Failure to file timely objections may constitute a waiver of any appellate rights.



Lisa Pupo Lenihan
UNITED STATES MAGISTRATE JUDGE

Dated: 12-16-05

cc: The Honorable Arthur J. Schwab

THOMAS MCCUNE
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